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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

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Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Reef Fish Fishery of the Gulf of Mexico; Amendment 34

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 34 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 34 proposes to modify the income qualification requirements for the renewal of Gulf of Mexico (Gulf) commercial reef fish permits and revise the crew size regulations for dual-permitted vessels (i.e. vessels that possess both a charter vessel/headboat permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish) while fishing commercially. The intent of Amendment 34 is to remove permit requirements that may no longer be applicable to current commercial fishing practices and to improve vessel safety in the Gulf reef fish fishery.

DATES: Written comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2011-0025" by any of the following methods:

- Electronic submissions: Submit electronic comments via the Federal e-Rulemaking Portal:
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2011-0025" in the search field and click on "search". After you locate the proposed rule, click the "Submit a Comment" link in that row. This will display the comment web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach

additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the "Commenting" section at <http://www.regulations.gov/#!faq> or the Help section at <http://www.regulations.gov>.

Electronic copies of Amendment 34, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, Southeast Regional Office, NMFS, telephone 727-824-5305; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the Federal Register notifying the public that the plan or amendment is available for review and comment.

Background

This amendment addresses several administrative issues relative to earned income requirements for commercial Gulf reef

fish permit renewal and to the maximum crew size for dual-permitted vessels while fishing commercially. Due to recent changes in the Gulf reef fish commercial sector the income requirement and crew size limit regulations may no longer effectively serve their original purposes. The Council considered several alternatives for modifying the income requirement for permit renewal and the maximum crew size of dual-permitted vessels. These alternatives are summarized below.

Eliminating the Income Qualification Requirements for Commercial Gulf Reef Fish Permits

Under the current regulations, an applicant renewing a commercial vessel permit for Gulf reef fish must attest that greater than 50 percent of his/her earned income is derived from commercial fishing (i.e. harvest and first sale of fish) or charter fishing during either of the 2 calendar years preceding the application. Applicants must complete the Income Qualification Affidavit section on the Federal Permit Application for Vessels Fishing in the EEZ (Federal Permit Application) as proof of meeting permit income qualification requirements for commercial Gulf reef fish vessel permits. In addition, the requirement does not address regulatory changes such as the implementation of individual fishing quota (IFQ) programs for the red snapper and grouper/tilefish species which

account for the majority of Gulf reef fish landings. Regardless of the proportion of a fisherman's income derived from commercial or charter fishing, participation in these IFQ fisheries is restricted to those who possess quota shares or who sell annual allocation. Eliminating the income requirement would afford more flexibility to fishermen to allow them to earn income in other occupations. This added flexibility would allow some fishermen to renew their permits even if they did not have the opportunity to earn enough income from fishing.

In addition, this income requirement is relatively easy to meet or circumvent. However, the process of collecting tax return documentation is a large administrative burden that has been tried and failed in the past. Finally, the elimination of income requirements would also decrease the administrative burden to NMFS and the applicant by simplifying the permit renewal process.

The Council considered expanding the income sources used to determine the applicant's income earned from fishing to include income earned from the sale of IFQ shares and allocation. However, this alternative is not expected to affect the relative ease with which income qualification requirements can be circumvented. Another alternative would have replaced the income requirement with a landings requirement where an applicant would be required to prove that a predetermined amount

of Gulf reef fish had been landed in the preceding year. The Council considered minimum annual landings thresholds ranging from 500 lb (227 kg) to 2,000 lb (907 kg) of Gulf reef fish. This alternative could increase the administrative burden and be difficult to monitor and enforce. A landings requirement may raise the potential of increased fishing effort to achieve the required threshold. Finally, the Council considered implementation of a protocol to temporarily suspend income requirements in response to events and conditions (such as oil spills or hurricanes) that affect fishing effort regionally or Gulf-wide. However, the election to eliminate the income requirements renders this option redundant.

Increasing the Maximum Crew Size for Dual-Permitted Vessels

Currently, 154 vessels possess a charter vessel/headboat permit and a commercial permit for Gulf reef fish, referred to as dual-permitted vessels. Unless the vessel has a certificate of inspection, dual-permitted vessels are limited to a three person maximum crew size as established under the final rule implementing Amendment 1 to the FMP (GMFMC 55 FR 2078, January 22, 1990). Historically, limiting the crew size on a dual-permitted vessel when fishing commercially may have served to prevent a vessel from taking out a number of passengers under the pretense of making a charter trip, but subsequently selling the catch. Under current commercial fishing practices, limiting

the crew size of a vessel to prevent selling catch caught on a charter trip is no longer a primary concern. In addition to the implementation of the individual fishing quota programs, all commercial Gulf reef fish vessels are required to be equipped with vessel monitoring systems. The strict reporting requirements of these management measures make it clear when a vessel is operating as a commercial vessel.

Dual-permitted commercial spear fishermen requested an increase in crew size to allow two divers in the water, diving as a buddy pair, while two crew members remain aboard the vessel. This conforms to safe operating procedures for commercial diving and directly promotes the safety of human life at sea. The Council considered eliminating the crew size completely or increasing the maximum size from three to four persons. It is possible that eliminating the crew size requirement completely could lead to an increase in effort or other unintended consequences. Therefore, the Council selected the more prudent alternative, a controlled increase in crew size from three to four persons. Limiting the crew size increase to one additional crew member rather than eliminating the maximum crew size requirement completely minimizes any potential increase in efficiency and other unintended effects.

Proposed Rule for Amendment 34

A proposed rule that would implement Amendment 34 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 34 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the Federal Register for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 34 for Secretarial review, approval, and implementation. NMFS' decision to approve, partially approve, or disapprove Amendment 34 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received by 5 p.m. eastern time, on [insert date 60 days after publication in the FEDERAL REGISTER], will be considered by NMFS in the approval/disapproval decision regarding Amendment 34.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 5, 2012

Lindsay Fullenkamp,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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